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VIA ECF

The Honorable Joseph F. Bianco
Visiting Circuit Judge (sitting by designation in below referenced matter)
U.S. Court of Appeals for the Second Circuit
100 Federal Plaza
Central Islip, New York 11722

Re: **United States of America v. Kenner, Cr. No. 13-607 (JFB)**

Dear Judge Bianco,

We write on behalf of Danske Bank A/S London Branch (“Danske”) with respect to the government’s continued delay in obtaining approval from Main Justice for the proposed settlement on forfeiture of the Resort Property.

On August 25, 2021—almost four months ago—the parties advised the Court of a potential settlement. At that conference, the Court directed that if Danske accepted the settlement, the Government would have two weeks to obtain approval from Main Justice and to the extent the Government did not have a timely response from Main Justice, the Government was to file a letter explaining the delay. Dkt. Entry 1110. By letter dated November 3, 2021, after several Government requests seeking adjournments of Court status conferences to finalize the agreements, the Government advised the Court that the parties reached an agreement as to the terms of a settlement, the government had approval from the USAO-EDNY Office to enter into the settlement and was in the process of obtaining approval from Main Justice. Dkt. Entry 1123. Three weeks later, at the November 29, 2021 Court status conference, the Government advised for the first time that it needed an additional 4-8 weeks to obtain the necessary Main Justice approval. The Government has offered no real explanation, per the Court’s original August 25, 2021 instruction, as to why it is taking so long to obtain an approval from Main Justice.

Although Danske expressed disappointment in this delay during the November 29, 2021 hearing, a delay of potentially 8 weeks, or more for that matter, exposes the potential note sale to risks and causes continued harm to Danske and its shareholders. As mentioned at the Court hearing, it is only after Main Justice approval that Silverpeak will move forward with due diligence, which is scheduled for 60 to 90 days. Assuming there are no material issues identified or that occur between now and the end of that time period, final approval of the deal will not occur



The Honorable Joseph F. Bianco
December 9, 2021
Page 2

until *at least* 5 months from now (assuming Main Justice approval takes 8 weeks and diligence concludes 90 days thereafter). Financial circumstances over a potential five-month period can significantly change, causing risk to whether the note sale and agreement will close.

Moreover, Danske has not been paid since September 2019 for interest and/or principal it is owed. Danske has loaned millions of dollars and is not receiving any return. The only reason the Resort remains solvent is because of Danske's forced forbearance in executing its remedies as a lender. Every day that has passed and continues to pass without final resolution harms Danske and Danske's shareholders.

We recognize that the Court has directed the government to submit a detailed explanation by January 7, 2022 outlining why this matter is taking so long to resolve. We respectfully request that the Court instead schedule a Court status conference for January 7, 2022 (or soon thereafter) and, to the extent Main Justice has not yet approved the agreement, direct that a representative from Main Justice be present to explain the delay and to advise the Court and interested parties of how much additional time is required.

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We thank the Court for its time and attention to this matter.

Respectfully,

/s/ George Kostolampros

George Kostolampros
Doreen S. Martin
Xochitl S. Strohbehn

cc: All parties of record via ECF